UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CROZER CHESTER MEDICAL CENTER

and

Case 4–CA–130177
4–CA–136558
4–CA–138359

PENNSYLVANIA ASSOCIATION OF
STAFF NURSES AND ALLIED
PROFESSIONALS (PASNAP)

William E. Slack, Esq.,
for the General Counsel.
Edward V. Jeffrey, Esq., and *Michael J. Passarella*, Esq.,
for the Respondent.
Jonathan Walters, Esq.,
for the Petitioner.

DECISION

Statement of the Case

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on February 4 and 5, 2015. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by banning off-duty employees, on June 3, 2014, from engaging in picketing, demonstrations and leafleting, in support of the Charging Party Union (hereafter the Union or PASNAP), in outside non-working areas of its property; and by banning an off-duty employee, on September 3, 2014, from distributing leaflets in support of the Union inside the lobby entrance of Respondent's hospital and threatening that employee with unspecified reprisals if she continued to wear a sign in support of the Union. The complaint also alleges that Respondent violated Section 8(a)(1) by issuing an e-mail to employees prohibiting them from supporting striking fellow employees, creating among those employees an impression of surveillance, and maintaining an unlawfully broad no-solicitation rule. Finally, the complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with relevant information necessary for its bargaining with Respondent in connection with its position on staffing issues and in connection with its

position on temporary replacements hired by the Respondent to continue operations during a two-day strike by the Union in September 2014. The Respondent filed an answer, supplemented by amendment during the hearing (Tr. 10-11), denying the essential allegations in the complaint.

After the trial, the General Counsel, the Charging Party and the Respondent filed briefs, which I have read and considered. I have also read and considered the brief amicus curiae filed by the Hospital and Healthsystems Association of Pennsylvania (HHAP). Based on those briefs and the entire record, including the testimony of the witnesses, and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. Jurisdiction

Respondent, a Pennsylvania corporation, operates an acute care hospital in Upland, Pennsylvania. During a representative one-year period, Respondent received gross revenues in excess of $250,000 and purchased and received, at its hospital, goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. Accordingly, I find, as Respondent admits, that it is an employer within the meaning of Section 2(2), (6) and (7) of the Act. I also find, as Respondent also admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Facts

Background

Since 2000, the Union has represented a unit of about 550 nurses at Respondent's hospital in Upland, near Chester, Pennsylvania. Before 2000, the nurses were represented by predecessor unions since about 1970. For the past 6 years, the Union also represented about 50 paramedics employed by Respondent in a separate unit. The existing collective bargaining agreement between Respondent and the Union in the nurses' unit expired on June 8, 2014, and the parties have been bargaining for a successor agreement since April of 2014.[1] As of the time of the hearing, the parties had met more than 15 times, but, as yet, they have not reached a new agreement. Some of the issues that have divided the parties include staffing issues, pay rates and pension benefits. Tr. 31-33, 87-90.

The bargaining team for the Union included Executive Director Bill Cruice, who was the Union's chief negotiator, Staff Representative Andrew Gaffney, and several nurses. The Respondent's team included Attorney Roger Gilson, who was Respondent's chief negotiator, Vice-President of Human Resources Elizabeth (Liz)

[1] The agreement covering the paramedics expired in December 2014.

Bilotta, and Human Resources Representatives Tony DiBartolo and Charles Riley. Tr. 31.

Physical Layout of Respondent's Property and Hospital and Applicable Rules

Since several of the complaint allegations deal with access by off-duty employees engaged in protected concerted activity to Respondent's exterior and interior property, it is necessary to describe that property in some detail.

Respondent's hospital, made up of several buildings over a large campus-like tract, is located off Upland Avenue, a public, two-lane road, with sidewalks on both sides, that runs from the City of Chester to Upland Township. The speed limit on Upland is 35 miles per hour and Upland intersects with Medical Center Boulevard, a two-lane paved road, which is owned by Respondent. Medical Center Boulevard provides access to hospital buildings and ends in a large, above ground parking garage. Medical Center Boulevard also has sidewalks on both sides and permits SEPTA public buses to run into hospital grounds, with a bus stop at a point near the parking garage. There is a left turn lane on Upland Avenue for vehicles going to the hospital, a stop light at the intersection of Upland and Medical Center Boulevard, and no gate or guard restricting entrance to the hospital property.

The hospital's main entrance is to the left as one enters Medical Center Boulevard, some 40 or 50 yards from the intersection of Upland and Medical Center Boulevard and some 30 yards off Medical Center Boulevard. Vehicular access to the entrance is provided by a circular driveway, with an 8-foot wide sidewalk on the side closest to the hospital entrance.

After one enters the hospital, he or she confronts a lobby area about 20 yards long and 15 yards wide. To the left is a sitting area and to the right is the admission office with a separate entrance. At the end of the lobby is an information desk, manned by volunteers. Behind the information desk is a gift shop, with a separate entrance, and a bulletin board. Off the end of the lobby there are hallways that lead to patient care areas, as well as to the parking garage.

Respondent does not have a rule restricting access by off-duty employees to the exterior or interior of its property. Indeed, even non-employee representatives of the Union are permitted, under the last collective bargaining agreement, to engage in union activity in both the exterior and interior of Respondent's property, provided they give advance notice to Respondent's management. Tr. 85-87. Uncontradicted testimony shows that off-duty employees had access to both interior and exterior areas of the hospital for all sorts of purposes. Tr. 137-138,143,151-152. And Respondent conceded, at the hearing (Tr. 125-126), that off-duty employees have the right to leaflet on its property and that it permits such leafleting.

During the relevant period involved herein, roughly from April through December of 2014, Respondent also maintained a broad no-solicitation rule as part of its Administrative Policy and Procedural Manual. That rule prohibited employees from

soliciting patients and visitors "for any purpose on [Respondent's] property." The rule was rescinded and replaced by a valid rule as part of a revision of Respondent's Manual. That revision was dated January 30, 2015. Jt. Exhs. 4 and 4(a), Tr. 248-249, 255.

The Activities of Off-Duty Employees on June 3

On May 22, 2014, the Union sent a letter to Respondent, over the signature of Executive Director Bill Cruice, notifying it, as required by Section 8(g) of the Act, that the Union would be undertaking informational picketing at Respondent's facility on June 3, 2014. The letter listed three different time segments for the activity: 6 a.m. to 8:30 a.m.; 11 a.m. to 1:30 p.m.; and 3:30 p.m. to 5 p.m. Jt. Exh. 11. In accordance with the letter, the Union, utilizing several non-employee Union representatives and off-duty nurses, engaged in that activity, whose purpose was to publicize its positions in bargaining with Respondent. Most of the picketing and leafleting on June 3 took place on the sidewalk off Upland Avenue at the intersection of Medical Center Boulevard. The pickets congregated at that location shortly before 6 a.m. on the morning of June 3. Tr. 42, 49-51, 57-59, 70-71.

At some point, between 6 and 6:30 a.m., on June 3, Union Representatives Paul Muller and Jessica Weil led a group of nurses down Medical Center Boulevard on the sidewalk opposite the hospital entrance. They wore body signs and carried signs on sticks that were about 36 inches by 24 inches; the signs bore such legends as "Crozer nurses united for safe staffing now" and "Retirement with Respect." Tr. 58-61, 104-105, G.C. Exh. 8. About half the group, some 20 nurses, led by Weil, broke off from the others and crossed Medical Center Boulevard at the first crosswalk leading to the circular driveway toward the main entrance to the hospital. The remainder of the group, headed by Muller, continued on the sidewalk down Medical Center Boulevard. When they reached the crosswalk that led to the parking garage, near the public bus stop, they were confronted by Liz Bilotta, Chief Nursing Officer Eileen Young and another official of Respondent. Tr. 105. According to Bilotta, she told Muller that she respected the group's right to engage in informational picketing, but said, "you can't do it on hospital property, and that they needed to go back to Upland Avenue." Tr. 140. She also told Muller that the other group headed to the main entrance had to leave for the same reason. Tr. 341. Young confirmed Bilotta's account of the exchange with Muller. Tr. 317-320. After a short discussion with Bilotta, Muller called Cruice, who had not yet arrived on the scene, on his cell phone and received instructions to return to the intersection on Upland Avenue. Muller then led his group of nurses back to Upland Avenue. Tr. 105-107, 109-113.

The second group of nurses led by Union Representative Weil reached the hospital entrance and some crossed it before being confronted by Young. According to Young, she told the pickets there basically the same thing that Bilotta had told Muller, namely, that the group was not permitted to picket on Respondent's property and the pickets should leave the area and return to Upland Avenue. Tr. 320-321. After some discussion, these pickets also left and returned to Upland Avenue. Tr. 106, 109-114, 139-143, 153-155.

At about 7 a.m., Union Representatives Cruice and Gaffney led a group of about 15 to 20 nurses down the sidewalk along Medical Center Boulevard on the opposite side of the hospital entrance. They were carrying picket signs or wearing body signs similar to those carried by the earlier group of pickets. Tr. 59-60. After about 20 yards into Medical Center Boulevard, the group was met by Liz Bilotta and Chief Nursing Officer Eileen Young. They were told that they were on hospital property and they had to leave. According to Bilotta, she told Cruice that the pickets were not permitted on Medical Center Boulevard because "it's private hospital property." Tr. 342. Cruice told Bilotta and Young that the Union representatives would leave, but, in his opinion, the off-duty nurses were entitled to be on the property. Bilotta insisted that all the picketers had to leave the hospital property; after that, everyone left and returned to the public intersection of Upland and Medical Center Boulevard. Tr. 61-63, 67.[2]

Later that morning, close to or at about noon, Muller and a single off-duty nurse, Teresa Devlin, went on Respondent's property, along Medical Center Boulevard, each with a stack of pro-union leaflets that they intended to distribute. Neither carried or wore signs, although Devlin may have been wearing a Union shirt. Tr. 107-109, 134-136, G.C. Exh. 5. As they neared the circular drive leading to the hospital entrance, they were approached by Security Manager Ryan Clarke. Clarke had been instructed by his superiors that there would be picketing at Upland and Medical Center Boulevard and "not to stop anything," but understand what pickets or protesters were doing "if they left Upland and Medical Center Boulevard." Tr. 295. When he met Muller and Devlin, Clarke asked what they were doing. They responded that they intended to pass out leaflets. Clarke told them that he would have to "check with administration," presumably to see if leafleting was permissible at that location. Muller and Devlin then said that they would turn back to the Upland Avenue location and they did (Tr. 296, 304-305, 309).[3]

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[2] Many of the findings about these three incidents of picketing on June 3 are based on testimony from General Counsel's witnesses. But the findings concerning what management officials told the pickets when they confronted the pickets is based solely on the testimony of Bilotta and Young. Although several witnesses for the General Counsel testified about these confrontations between the pickets and management officials, there is no serious conflict with the versions of Bilotta and Young that are set forth above.

[3] The above conversation is based on the credible testimony of Clarke, who appeared from a remote location by video, pursuant to the agreement of the parties. The video testimony was clear and I was easily able to assess Clarke's demeanor, which was impressive. He was no longer employed by Respondent when he testified, and thus had no particular reason to falsify his testimony or support his former employer. He answered questions confidently and candidly. In contrast, there were some inconsistencies in the accounts of Muller and Devlin, who basically testified that Clarke told them they were not permitted to leaflet in the place they were and ordered them to leave the hospital premises. Muller did not identify Clarke, but Devlin did, referring to the name on his badge. Muller also testified that, in his conversation with Clarke, he made a distinction between him, as a union representative, and Devlin, as an employee; but Devlin did not corroborate Muller's testimony in this respect. Nor did

The Union's Request for Information About the Joint Committee Survey

On April 9, 2014, The Union, by letter from Executive Director Cruice, requested certain information from Respondent in connection with its bargaining positions. Among the requests was one for "[c]opies of all JCAHO (Joint Commission on Accreditation of Hospital Organization) surveys for the past 3 years." Jt. Exh. 6. Respondent answered on April 25, 2014. Its answer to the JCAHO request was to refer the Union "to the Pennsylvania Department of Health website where all JCAHO hospital surveys conducted at Crozer can be found." Jt. Exh. 7. The website to which the Union was directed included a July 3, 2013 letter from the Commission to Respondent confirming a March 2013 unannounced full survey of the Respondent's hospital for the purpose of "assessing compliance with the Medicare conditions for hospitals through the Joint Commission's deemed status survey process." The letter suggested that deficiencies in three areas had been found and corrected. It congratulated Respondent for "effective resolution of these deficiencies" and confirmed Respondent's Medicare accreditation with an effective date of March 23, 2013. The corrected deficiencies were listed as Sec. 482.12, Governing Body; Sec. 482.42, Infection Control; and Sec. 482.51, Surgical Services. Jt. Exh. 31.[4]

Clarke mention this exchange in his testimony. Moreover, I had the impression that Muller conflated that part of the conversation in which he pointed out the distinction between the rights of employees and union representative with a similar conversation he had with other management representatives he encountered earlier in the morning when he led a group of pickets along Medical Center Boulevard. I do not find that Muller and Devlin deliberately lied; rather I think that they testified to what they felt at the time was a restraint, rather than what Clarke actually said to them. Finally, I find Clarke's testimony consistent with what I find reasonable in the circumstances: He was told that the union activity would take place at Upland Avenue and he had checked on that activity earlier in the morning. It made sense that he wanted to check with his superiors to see if leafleting would be permitted at a different location, on hospital grounds near the entrance to the hospital. Indeed, it is clear on this record, that Respondent's policy with regard to leafleting by employees was that it was permitted, certainly in these circumstances where Devlin was not wearing a sign. Tr. 252.

[4] According the its public website, which might be different from the public website of the Pennsylvania Department of Health to which the Union was referred by the Respondent, the Joint Commission is an independent, not-for-profit entity that surveys, certifies and accredits health care organizations, particularly for Medicare and Medicaid purposes. Some of its survey results are publicly available, but most underlying material is not and it is protected from disclosure by confidentiality concerns. Included in confidential material is information from the organization to determine compliance with specific accreditation standards; an organization's "root cause analysis," prepared in response to the Commission's request; other materials that may contribute to the accreditation decision; algorithms and information used in the survey; the organization's self assessments and related corrective action plan; and the identity of individuals filing complaints about an organization. Jt. Exh. 32.

In an email to Respondent, dated May 7, 2014, the Union stated that Respondent's answer of April 25 was incomplete insofar as it related to the JCAHO request. The email asked for "the actual survey results delivered to Crozer by the Joint Commission for the last 3 years. This includes any non-public documents and correspondence from the Joint Commission and any recommendations or deficiencies identified from the unannounced surveys." The email continued by referring specifically to deficiencies in "482.12, governing body; 482.42, infection control; and 482.51, surgical services." Jt. Exh. 8.

Respondent answered by letter dated May 16, 2014. In pertinent part, the letter stated as follows: "We do not believe the information requested is relevant or necessary for management to fulfill its role of bargaining representation. Moreover, the Joint Commission (TJC) is considered a Review Organization under the Pennsylvania Peer Review Protection Act 63 P/S. Section 425.I. Thus, any documents, reports or recommendations prepared or issued by TJC are confidential and protected from disclosure. Furthermore, by disclosing such information, the health system would lose its peer review privileges." Jt. Exh. 9.

In a May 19, 2014 response, the Union reiterated its position on the Joint Commission information, stating that "staffing levels and its impact on patient care and patient safety are central issues in our current negotiations. Among the many other reasons why this data is relevant, Joint Commission surveys help to pinpoint gaps in patient care and establish the foundation for the Union's proposals for improvements in staffing levels." Jt. Exh. 10.

Union Representative Gaffney viewed the public documents on the Joint Commission's website, in accordance with Respondent's instructions. He construed them as presenting possible staffing issues that related to the Union's bargaining position on staffing. Tr. 34-38. According to Gaffney, the public documents were insufficient from the Union's point of view because they did not list the details of the problems with infection control or surgical services that might impact on staffing. Tr. 38-40, 91-93. He testified that the information requested by the Union would possibly support its contention in bargaining that more staffing was required. As he testified, the Union knew from information provided by nurses that there had been some problems during the Joint Commission survey with infection control and surgical services and that could mean that there was work that nurses were not completing in a timely manner. Tr. 35-40, 92-94. When asked on cross-examination to confirm that Respondent provided other information on "underlying issues" covered by the Joint Commission report, Gaffney agreed. See Jt. Exhs. 21-25. But he testified that the Union was not looking for alternative documents compiled by the hospital, but with documents generated by or for an independent body like the Joint Commission. Tr. 93-101.[5]

[5] Respondent's chief negotiator, Roger Gilson, also testified that Respondent provided other information on staffing and incident reports. But these were alternatives unconnected to the Joint Commission documents that the Union requested. Tr. 363-364.

By separate letters dated May 20 and May 27, 2014, Respondent provided the Union with responses to the request for Joint Commission information. Jt. Exhs. 12 and 28. It continued to question the relevance of the information and asserted that other information on staffing levels was requested and provided. Respondent also provided legal authorities and arguments in support of its contention that the Joint Commission information was confidential under Pennsylvania law and under a Board case, *Borgess Medical Center*, cited at 342 NLRB No. 109 (2004). The Respondent also asserted that "[i]f the Hospital disclosed such documents, it would effectively waive the peer review protection for the institution and those that relied on that protection, when participating in the quality and peer review processes." Jt. Exh. 12, p. 4. In addition, the Respondent asserted that, "if the Medical Center disclosed the Joint Commission's non-public opinions, physicians, nurses and other medical providers could thereafter refuse to participate and fully disclose their medical opinions in subsequent surveys and other peer review processes." Ibid.

According to Gaffney's uncontradicted testimony, the Respondent never provided the non-public information about the Joint Commission study that the Union requested. Tr. 40. He also testified that the only offer by Respondent to accommodate the Union's request with its alleged confidentiality concerns was in a "brief conversation" between him and Respondent's chief negotiator, Roger Gilson, "in the hallway outside of bargaining." Tr. 40-41. According to Gaffney, Gilson said that maybe there was something Respondent could do, but he was not sure. Tr. 41.

Gilson also testified about discussions concerning the Joint Commission report in bargaining, although he did not testify about any separate conversation with Gaffney. Gilson testified that there were two times the issue was discussed "across the [bargaining] table." Those discussions, which took place in May (Tr. 367), essentially replicated the positions of the parties reflected in their written correspondence set forth above. Tr. 360, 366. Gilson not only adhered to Respondent's position on confidentiality, but also insisted that the information was not relevant to bargaining. Tr. 364-365. Gilson also testified that he engaged in a sidebar conversation on the subject with Bill Cruice in the middle of June. According to Gilson, in that conversation, he was concerned that Respondent's privilege would be waived if some of the requested information was provided. He therefore asked whether Cruice could think of any way the matter could be resolved and apparently none was forthcoming, although Cruice reserved "the right to bring it up again." Tr. 361-362, 365.[6]

Aside from his testimony set forth above, Gilson did not testify that Respondent offered to accommodate the Union's need for the Joint Commission information. And, on cross-examination, he conceded that he had never actually seen the Joint Commission report. So neither he nor the Union knew whether or not any part of it could be redacted to provide an appropriate accommodation. Tr. 366-367. Indeed, Gilson testified that he repeatedly told the Union bargainers that "we weren't in a

[6] Gilson conceded that the Union never withdrew the information request and Cruise told him he was not withdrawing it. Tr. 368. Later, the Union informed Gilson that it was going to file a charge over the failure to provide the information it requested. Tr. 362.

position where we could give a portion [of the confidential information] without waiving the privilege for the whole. . . . It was an all or nothing thing." Tr. 374-375. By his reference to a privilege, Gilson meant the applicable Pennsylvania statute, which was referenced in Respondent's May 27 letter mentioned above. Jt. Exh. 5, Tr. 375-376.[7]

Activity by Off-Duty Employees on September 3, 2014

Pursuant to an August 22, 2014 letter notification to Respondent, the Union engaged in additional informational picketing and leafleting on September 3, 2014. As before, the Union set three time periods for the activity: 6 a.m. to 8:30 a.m.; 11 a.m. to 1:30 p.m.; and 3:30 p.m. to 5:30 p.m. Jt. Exh. 18, Tr. 157-158. This time, because there were pending unfair labor practice charges filed by the Union, some dealing with the June 3 picketing that Respondent hoped to settle, and because the Respondent wanted to walk back its previous position, it decided to "stand down" and permit picketing and leafleting on its property. Tr. 249-251, 343-345. Thus, on September 3, the Union and its members picketed along Medical Center Boulevard and outside the hospital entrance along the circular driveway. Leaflets supporting the Union were also distributed. Tr. 158, 169, 249, 285, 322. The leaflets addressed unfair labor practice charges that had been filed by the Union as well as the Union's bargaining position, including a reference that stated, "Safe Staffing Saves Lives." G.C. Exh. 6.

During the first two time periods of union activity, some leafleting also took place inside the hospital.[8] The leafleters were instructed not to block anyone and to hand

[7] Section 425.4 of Title 63 of Purdon's Pennsylvania Statutes and Consolidated Statutes, titled "Confidentiality of review organization's records," provides as follows:

> The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions or other actions of such committee or any members thereof; Provided, however, That information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of said committee hearings. Jt. Exh. 5.

[8] The Respondent also distributed leaflets supporting its bargaining position throughout the hospital, including placing them on the information desk and on the bulletin board in the first floor lobby. Tr. 141-147, 149-150, 155-156.

leaflets only to interested people. Tr. 159. But Respondent was concerned that some of the leafleters were engaged in what it perceived as picketing inside the hospital. Human Resources Representative Tony DiBartolo approached some of the leafleters in the lobby in the early morning session and asked them to remove their body signs. After DiBartolo's request, the leafleters did remove their signs, and, according to DeBartolo, they were permitted to continue leafleting. Tr. 230, 240-242, 254. Some management officials held a meeting at about 2 p.m. in the afternoon where they discussed the leafleting activity by people with body signs, which had extended to corridors off the main lobby and included some patient care areas. They also discussed video tapes of this activity that had been captured by security cameras throughout the hospital interior. Tr. 242-247. DiBartolo attended that meeting, but he himself had observed some of the activity in other parts of the hospital interior. Tr. 254-258.[9]

In the third leafleting session, the one in the late afternoon, which is the subject of the only complaint allegation concerning the September 3 union activity, both Union Representative Janna Frieman and off-duty nurse Carol McNasby positioned themselves in the lobby, near the information booth and a sign placed in that area by Respondent. Tr. 161-165, 182-189. See also G.C. Exh. 12. The sign stood on an easel and was about 3 feet by 2 feet. It highlighted the Respondent's bargaining position in the negotiations with the Union. Tr. 275-276. Both Frieman and McNasby were wearing body signs, which were no larger than Respondent's stationary sign. A picture of McNasby wearing her sign and carrying leaftets appears in the record as G.C. Exh. 13. The sign hangs down the front of her body on a string from her chest to a point below her waist; it appears to be about 2 and 1/2 feet in length and about 18 inches wide. It reads, "Skilled Nurses at Your Bedside, Priceless." The Respondent's stationary sign, which is also visible in the exhibit, asks, "Why are nurses picketing Crozer?" Ibid. [10]

Both Frieman and McNasby passed out leaflets. It is also apparent that Frieman was walking up and down the length of the lobby, whereas McNasby was mostly stationary, moving only a few feet from her position as she was giving leaflets to interested people near the Respondent's stationary sign. Tr. 187-188, 191-192. After a few minutes, Human Resources Representative Charles Riley approached McNasby.

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[9] DiBartolo also referred to an incident, which he did not observe, but that was reported to him, where a leafleter inside the hospital upset a burn patient. Tr. 260. Another witness testified in more detail about this incident. Tr. 287-288. There were also complaints from people who were confronted by leafleters in the admissions area, which is a large separate room to the right of the lobby, accessible through doors that remain open from about 6:30 a.m. to 4 p.m. Tr. 283-290. None of these incidents involved the leafleting by McNasby in the lobby area, which is discussed below and is the subject of the only complaint allegation dealing with the Union's September 3 activity.

[10] DiBartolo described the body signs as 28 inches wide and about 3 feet in length. Tr. 260-261. But, in viewing GC Exh. 13, I believe the sign that McNasby was wearing was smaller, with the dimensions set forth above in text.

According to McNasby's uncontradicted testimony, Riley approached her and said that she and Frieman would "get in trouble" if they "stood there." Tr. 189.[11]

A little later, DiBartolo approached McNasby while she was still standing next to Respondent's stationary sign. He told her that she could continue her leafleting, but she would have to take her body sign off. Tr. 189-190. At that point, Frieman joined DiBartolo and McNasby, and engaged DiBartolo in a conversation. Then, Frieman and McNasby left the lobby area. Tr. 244-246. DiBartolo testified that he approached Frieman and McNasby on this occasion only after, and as a result of, the 2 p.m. management meeting. Tr. 265. He also testified that he had observed both of them picketing outside the hospital before they went in to the lobby. Tr. 248-249.[12]

The Strike of September 21-22, Related Information Request, and Instructions to Non-Unit Employees Supporting the Strike

On September 8, 2014, the Union sent a letter to Respondent notifying it, pursuant to the requirements of Section 8(g) of the Act, that Union members would be engaging in a two-day strike beginning at 7:30 a.m. on Sunday, September 21 and ending at 6:29 a.m. on Tuesday, September 23. Upon the end of the strike, the letter continued, the Union "makes an unconditional offer to return to work." G.C. Exh. 2.

On September 12, 2014, Respondent sent a letter to its nurses, stating, inter alia, that it had entered into a contingent staffing agreement with a third party to provide staffing to replace striking nurses. According to Respondent, the staffing company required a guarantee of 5 days work for the replacements and that this requirement might delay reinstatement of some nurses after the end of the two-day strike. Jt. Exh. 13.

The same day, September 12, the Union responded by fax and email. Jt. Exh. 14. In its response, the Union, in pertinent part, reiterated that its strike would last only two days and also reiterated its unconditional offer on behalf of the nurses to return after two days. It also requested the following information to verify Respondent's assertion that the staffing company required five days of work for the replacements:

[11] I credit McNasby's clear and truthful testimony concerning what Riley told her. Riley, who was present in the courtroom during the trial, did not testify to contradict McNasby's account of their conversation.

[12] The above findings about the leafleting in the lobby are based in part on, and supported by, a video tape of the incident involving Frieman, McNasby, Riley and DiBartolo, which was received in evidence in the form of a computer thumb drive. R. Exh. 4, Tr. 266-274. The entire incident lasted about 5 or 6 minutes. I admitted the exhibit in evidence to the extent that it covered those 5 or 6 minutes, which appear at the end of the exhibit. But I rejected the remainder of the tape, which reflected other activity inside the hospital at different times on September 3. However, the rejected part of the tape remains on the thumb drive because it cannot be segregated from the part that was admitted in evidence. Tr. 266-279.

> 1. A true, correct and complete copy of the contract with the staffing agency(s) referred to in your letter of September 12, 2014.
>
> 2. Any and all documents relating in any way to the negotiation of the agreement described above in #1 above, including but not limited to correspondence, notes, emails, drafts, proposals, counterproposals, memoranda and any other writing between employees, agents and/or representatives of Crozer Chester Medical Center or CKHS, and the temporary staffing agency(s) with whom the agreement was made.
>
> 3. Copies of any and all contracts Crozer Chester Medical Center or CKHS has entered into at any time within the last three (3) years with any temporary employment agency or nurse registry for the provision of Registered Nurse services at Crozer Chester Medical Center.

According to Union Representative Gaffney, the Union made this information request to verify the 5-day guarantee for replacement workers, to see whether Respondent had initiated the matter, and to see whether other staffing agencies utilized by Respondent in the past could provide temporary workers without the 5-day guarantee. Depending upon the answers, the Union could have filed a grievance or bargained over the matter to support members who might lose work because replacements were committed beyond the end of the 2-day strike. Tr. 45-48, 84, 101-102. The agreement of the parties contained a non-discrimination provision. Tr. 68, G.C. Exh. 7.

At some point between September 12 and the projected date of the strike, the parties held a bargaining meeting. At this meeting, according to Gilson, the subject of the temporary replacements was raised. The Union took the position that the nurses should be reinstated on September 23, immediately after the strike ended. Gilson responded that that could not happen because of the staffing company's 5-day guarantee. He also said that Respondent would reinstate striking nurses "to the extent there were positions available." Tr. 370-371.

The strike took place, in accordance with the Union's September 8 notification, on September 21 and 22. Gilson met again with representatives of the Union at the end of the strike on September 23. Tr. 368-371, Most of the striking nurses were not put back to work at the end of the strike because, according to Respondent's agreement with the staffing company supplying replacements, the latter had a guarantee that the replacements would work 5 days. Gilson conceded that, in his September 23 meeting with Union representative, he told them that only about 20 of the 550 unit positions were available to returning strikers as of that date. Tr. 372-373. As a result, the remaining nurses lost 3 days of pay. It appears that, to date, the Union has not contested this loss either in a grievance proceeding or by filing an unfair labor practice. Tr. 376-377.

On September 21, the first day of the strike, Respondent, through Assistant EMS Chief Lawrence Worrilow, an admitted supervisor and agent (Tr. 10-11), sent the following email to its paramedics, who were not on strike and were part of a separate bargaining unit (Jt. Exh. 15):

> As all of you are aware, this morning the Nursing Union (PASNAP) began their job action here at Crozer. Here are a few things to be aware of for the duration of this job action.
>
> 1. You must have your Crozer ID badge on at all times, even if you are in uniform.
> 2. While on duty you can not show any signs of support, as blowing of the EMS vehicles hors/sirens, waving/clapping or cheering as you pass by the picket line.
> 3. All patients are to be transported to Taylor ED unless the patient/family demand to be transported to Crozer.
> 4. There are numerous undercover outside security personnel on and around the property so please do not participate in any activities while you are working.

On October 16, 2014, Respondent's chief negotiator, Roger Gilson, wrote the Union's executive director, Bill Cruice, with respect to the staffing agreement that contained a minimum five day staffing commitment. He pointed out that, after some effort, he obtained from the staffing company copies of a redacted agreement, which he provided the Union in an attachment. The redacted copy of the agreement contained the name of the company, U.S. Nursing, as well as the clauses setting forth the work guarantee and the confidentiality of the staffing agreement itself. The work guarantee clause set forth a guarantee for the replacements of "a minimum of five [12 hour day] Shifts in the first Workweek and four Shifts per work week thereafter." The redacted copy did not contain a definition of the "Workweek." The confidentiality clause provides that the parties will not disclose the contents of the agreement or provide copies to third parties without the express written permission of the other party, "except to the extent required by law." Jt. Exh. 16.

On November 7, 2014, well after the conclusion of the strike, Respondent sent another email to the paramedics (Jt. Exh. 17). In it, Administrative Director Deborah Love and EMS Chief Robert Reeder apologized for the "erroneous and unauthorized" email of September 21, which they "disavow[ed] and repudiate[d]." The email specifically repudiated items 2 and 4 in the earlier email and stated that Respondent had "taken other appropriate remedial action to ensure that this is not repeated in the future." Ibid.

On December 19, 2014, the Union sent a letter to Respondent that included, among other matters, a renewal of its September 12 request "regarding the usage of temporary nurse staffing agencies." It stated that the information was needed to "properly enforce" the anti-discrimination provision of the current contract "through grievances or at the bargaining table." G.C. Exh. 3.

Respondent answered by letter dated January 23, 2015. It pointed out that "at the bargaining table and in prior correspondence," Respondent had told the Union that its "contract with U.S. Nursing prohibited the Medical Center from disclosing the contract or its contents to any third party." Nevertheless, Respondent reminded the Union that it was able to secure permission to disclose a redacted version showing the clauses on the five day staffing commitment and confidentiality, which it had earlier provided to the Union. Respondent also mentioned its unsuccessful efforts to secure the other staffing agreements requested by the Union due to the unwillingness of the companies involved to waive their confidentiality clauses. G.C. Exh. 4.

B. Discussion and Analysis

The Section 8(a)(1) Allegations Dealing with Picketing and Handbilling

The complaint alleges four distinct violations dealing with Respondent's interference with off-duty employees picketing and leafleting on its property. Three allegations involve interference with picketing and leafleting by off-duty employees on June 3, 2014. The first two deal with their picketing, demonstrations and leafleting in support of the Union's bargaining positions on Respondent's property outside the hospital: In the circular driveway in front of the main entrance to the hospital and along Medical Center Boulevard. Paragraph 7 of the complaint. The third deals with the leafleting of an off-duty employee in another outside area near the circular driveway. Paragraph 8 of the complaint. The last allegation in this respect deals with interference by Respondent on September 3, 2014, with leafleting by an off-duty employee in the inside lobby of the hospital and the threat of reprisal if the employee continued to wear a sign supportive of the Union on her body. Paragraph 9 of the complaint.

It is significant that the complaint in this case focuses on the rights of off-duty employees to picket and handbill on Respondent's property, as it did in *Town & Country Supermarkets*, 340 NLRB 1410, 1413 (2004). As the Board stated in that case, unlike nonemployee union representatives, employees "are not strangers to the employer's property, but are already rightfully on the employer's property pursuant to their employment relationship, thus implicating the employer's management interests rather than its property interests." Id. at 1414, citing authorities including *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945) and *Hudgens v. NLRB*, 424 U.S. 507, 521 fn. 10 (1976). Thus, the Board found off-duty employees could engage in protected activity in nonwork areas of their employer's property and the employer violated Section 8(a)(1) of the Act by prohibiting its off-duty employees from picketing and handbilling near the exit and entrance of its retail grocery stores. Ibid.

Both the Supreme Court and the Board have recognized that hospitals have a special need to provide a tranquil atmosphere to carry out their prime function of patient care, thus permitting some restrictions on otherwise protected activities of employees, particularly in interior areas. *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 507 (1978); *NLRB v. Baptist Hospital, Inc.,* 442 U.S. 773, 779-791 (1979); *St. John's Hospital & School of Nursing, Inc.,* 222 NLRB 1150 (1976), enforced in part, 557 F.2d 1368 (10th

Cir. 1997). The Board properly presumes that prohibitions against employee solicitation and distribution during nonworking time in nonworking areas are unlawful infringements on protected employee rights, where the "facility has not justified the prohibitions as necessary to avoid disruption of health-care operations or disturbance of patients." *Baptist Hospital*, supra, 442 U.S. at 779, citing to *Beth Israel Hospital*. But it is up to the employer to show that the banned activity is necessary to avoid disruption of health care operations or disturbance of patients. *In Baptist Hospital*, the Court agreed that the hospital had not "justified the prohibition of union solicitation in the cafeteria, gift shop, and lobbies of the first floor of the [hospital]." 442 U.S. at 786-787.

With respect to prohibiting employees from wearing union insignia during protected activity, it is well settled that an employer may not prohibit employees from wearing union-related insignia or attire unless it demonstrates "special circumstances." *Boise Cascade, Corp.,* 300 NLRB 80, 82 (1990). And the burden of proving such "special circumstances" falls on the employer. *Boch Honda,* 362 NLRB No. 83, slip op. 2 (2015). See also *Komatsu America Corp*., 342 NLRB, 649, 650 (2004).

In a hospital setting, as illustrated by the *Baptist Hospital* and *Beth Israel* cases discussed above, the employer's burden to show special circumstances would include showing a disruption of health care operations or disturbance of patients. More specifically, restrictions on wearing union insignia in immediate patient areas are presumptively valid, but such restrictions in other areas of a hospital are presumptively invalid. *Saint John's Medical Health Center*, 357 NLRB No. 170, slip op. 1-3 (2011). See also *Healthbridge Management LLC*, 360 NLRB No. 118, slip op. 2 (2014). And see *Washington State Nurses Ass'n v. NLRB*, 526 F.3d 577, 581-582 (9th Cir. 2008), denying enforcement to *Sacred Heart Medical Center*, 347 NLRB 531 (2006), particularly its discussion of *Mt. Clemens General Hospital v. NLRB*, 328 F.3d 837 (6th Cir. 2003).

Applying the above principles to the factual findings set forth above, I find that the evidence supports the violations alleged in paragraphs 7 and 9 of the complaint. I find that the General Counsel has not proved the violation alleged in paragraph 8 of the complaint.

The violation attributed to Security Manager Clarke

My factual findings do not support the violation alleged in paragraph 8 of the complaint. Based on my credibility determination, I find that Security Manager Ryan Clarke did not prohibit off-duty nurse Teresa Devlin from leafleting and exclude her from the property. She and Muller may subjectively have felt some restraint in waiting for Clarke to get instructions from his superiors on the propriety of the leafleting. But coercion and restraint within the meaning of the Act are measured by objective not subjective evidence. And Clarke's words did not objectively amount to coercion or restraint. It was Devlin's decision, perhaps with Muller's support and as a tactical matter, to leave; whatever restraint was felt as a subjective matter, the incident did not rise to the level of an unfair labor practice. Even if a technical violation could somehow be found, there is no need for a remedial order on this point, particularly since I find similar violations below, which do result in a similar remedial order. Moreover, it is clear that

Respondent permits leafleting on its property, particularly outside the hospital, at least when the employee, like Devlin here, is not wearing a body sign. I shall therefore dismiss paragraph 8 of the complaint.

The ouster of pickets on the exterior of the hospital

The other instances of interference with picketing on the exterior of the hospital grounds on June 3 are covered in paragraph 7 of the complaint. Those are a different story. There is no serious doubt that the picketing along Medical Center Boulevard and on the circular driveway near the outside entrance to the hospital was stopped by management officials. The pickets were directed to return to the public area at the intersection of Upland Avenue and Medical Center Boulevard. Respondent defends its actions by relying solely on its property interests. Bilotta made it clear in her testimony that the only reason she gave for ousting the picketers on June 3 was because they were on hospital property. Young made essentially the same point when she confronted another group of demonstrators. No other reason was given. But it is also clear that otherwise protected activity, including picketing, by off-duty employees who are entitled to be on the property, implicates, as the Board has stated in *Town & Country Supermarkets*, cited above, "the employer's management interests rather than its property interests."

The only evidence, aside from bare property rights, submitted by Respondent to justify the ouster of off-duty employees from its outside property on June 3 was the opinion testimony of Chief Nursing Officer Eileen Young. And that testimony arguably related to disruption of health care operations or disturbance of patients. Young conceded that picketing and leafleting outside the hospital was less a matter of concern than activity inside the hospital. Tr. 323. Indeed, it is difficult to see how there can be any disruption of health care operations or disturbance of patients on the sidewalks of Medical Center Boulevard, which is the functional equivalent of a public street. Young conceded that activity near from the circular drive leading to the entrance of the hospital was a greater concern than activity further away Tr. 323-326. But, even her concerns about activity near the entrance were not sufficient to provide the type of rebuttal required to ban union activity outside the hospital. First of all, when she confronted picketers on the circular drive outside the hospital entrance on June 3, she did not mention any concern about patient care. Moreover, her trial testimony about how the Union's activity at any point outside the hospital might disrupt health care operations or disturb patients was speculative. That is not enough to provide a defense to the otherwise protected activity the pickets engaged in here. See *Baptist Hospital*, supra, 442 U.S. at 787; and *Healthbridge Management*, supra, 360 NLRB No. 118 at slip op. 2-3.

Moreover, Young testified that her concerns about the impact of projected picketing, leafleting and demonstrations on patient care or tranquility were presented to and rejected by Respondent's management officials, who agreed to permit such activity on September 3. Tr. 324-326. Thus, whatever the reasons behind the decision to permit picketing and leafleting both inside the hospital and outside on the hospital grounds on September 3, Respondent did not think patient care or tranquility were

overriding concerns. And, although there is evidence that patient care may have been affected during some of the union activity *inside* the hospital on September 3, there is no evidence that the activity on hospital grounds *outside t*he hospital itself on that date actually impeded any health care operations or disturbed patients. Accordingly, I find that Respondent's prohibition against picketing and demonstrating both on Medical Center Boulevard and in the circular drive outside the hospital entrance on June 3 amounted to violations of Section 8(a)(1) of the Act.

Contrary to Respondent's contention (Br. 9-23), cases dealing with the rights of nonemployees to engage in union activities on private property are not applicable here. The relevant complaint allegation is addressed only to the rights of off-duty employees and the Respondent's interference with those rights. As the Board clearly held in *Town & Country*, off-duty employees are not strangers to their employer's property and their rights on their employer's property are governed by the rights of employees, not those of nonemployees, whose rights on such property are more restrictive Compare *Lechmere, Inc. v. NLRB,* 502 U.S. 527 (1988). Moreover, contrary to Respondent's further contention, the Board's discussion of off-duty employee rights in *Town & Country* made no distinction between peaceful picketing and distribution or solicitation. Off-duty employees have broad protections under Board law, subject to precisely limited exceptions. An employer may bar off-duty employee access to a facility only if the rule (1) limits access solely to the interior of the facility, (2) is clearly disseminated to all employees, and (3) applies to off-duty employees for all purposes, not just for union activities. *Tri-County Medical Center,* 222 NLRB 1089 (1976). See also *Saint John's Health Center,* 357 NLRB No. 170, slip op. 3-6 (2011). As shown in the factual statement, the Respondent does not have a no-access rule covering off-duty employees. And, as also shown in the factual statement, off-duty nurses were permitted access to both the exterior and interior parts of hospital property for all sorts of purposes.[13]

The ouster of employee McNasby from the hospital lobby

Turning to the alleged violation on September 3 in Paragraph 9 of the complaint, I also find that Respondent unlawfully interfered with protected employee activity when DiBartolo banned off-duty nurse McNasby from continuing her leafleting in the first floor lobby of the hospital unless she removed her body sign. Respondent conceded that the lobby is a nonwork area where employees, including off-duty employees such as

[13] Respondent's reliance on *Providence Hospital*, 285 NLRB 320, 322 (1987), a case that does involve off-duty employee picketing, is unavailing. In finding no violation in an employer's picketing ban on its private property, *Providence Hospital* relied on a no-longer applicable balancing test under *Fairmont Hotel*, 282 NLRB 139 (1986), which involved non-employees. In any event, *Fairmont Hotel* was overruled in *Jean Country*, 291 NLRB 11 (1988), on which Respondent also relies (Br. 9-10). But *Jean Country*, in turn, was repudiated in *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1988). See *Sprain Brook Manor,* 351 NLRB 1190, 1192 fn. 8 (2007). Thus, *Providence Hospital* has no precedential value on this particular point. The result in *Providence Hospital* is, in any event, inconsistent with the more recent Board decision in *Town & Country*.

McNasby, are permitted to pass out leaflets. Tr. 215. As indicated above, McNasby was mostly stationary as she handed out leaftets—actually, to only a few people. She did not interfere with passers-by and was essentially passive, waiting for people to approach her rather than aggressively approaching people. As also indicated above, employees who engage in protected activity on their own time in nonwork areas are permitted to wear union insignia and garb, absent special circumstances. Significantly, the only reason given by DiBartolo for preventing McNasby from leafleting in the lobby was that she was wearing a body sign supporting the Union's bargaining position. McNasby's sign stated that skilled nurses at patients' bedsides was "priceless." No special circumstances were mentioned by DiBartolo for banning the body sign when he was speaking with McNasby. And no other recognizable special circumstances were presented at trial to justify prohibiting McNasby from wearing the body sign while leafleting in the lobby, which is decidedly not a patient care area. See *Baptist Hospital*, supra, 442 U.S. at 787, where the Court found insufficient evidence to ban solicitation in the first floor lobby of the hospital in that case.

Indeed, Respondent's ban is undercut by its simultaneous posting of a large sign in the lobby, near where McNasby was leafleting, that presented its side of the bargaining dispute and gave its views why the nurses were picketing. Thus, any attempt by Respondent to show McNasby's sign interfered with hospital tranquility appears one-sided and hollow.

Respondent asserts (Br. 45-52) that it was entitled to oust McNasby because wearing the body sign was equivalent to picketing. I reject that notion. The only reason given for ousting McNasby was that she was wearing a body sign, suggesting that it was the message on her sign, not McNasby's leafleting or her presence in the lobby that caused her ouster. Nor was there anything else in McNasby's activities in the lobby that made her conduct unprotected or coercive. It is Respondent's burden to show that McNasby's conduct lost the protection of the Act; and that burden cannot be met by parsing the definition of "picketing" in the context of its use in other sections of the Act that make union conduct an unfair labor practice. In any event, McNasby's leafleting activity carried none of the usual attributes of picketing, such as patrolling and confrontation. Nor can it be viewed as the type of "signaling" that the Board has stated, "provokes responses without inquiry into the ideas being disseminated and distinguishes picketing from other forms of communication and makes it subject to restrictive regulation." *Teamsters Local No. 688*, 205 NLRB 1131, 1133 (1973). See also *Sheet Metal Workers Local 15 (Brandon Medical Center),* 356 NLRB No. 162, slip op. 2-3 (2011); *Southwest Regional Council of Carpenters (Held Properties)*, 356 NLRB No. 11, slip op. 1-2 (2010); and *Verizon New England, Inc.*, 362 NLRB No. 24, slip op. 4-5 (2015).[14]

[14] Some of the cases cited by Respondent and Amicus in support of a broader reading of the term "picketing" are inconsistent with the more recent Board cases cited above. See particularly *Sheet Metal Workers Local 15,* 356 NLRB No. 162, at slip op. 3, fn. 5; and *Southwest Regional Council of Carpenters,* 356 NLRB No. 11, at slip op. 1-2.

Respondent's position is not advanced because McNasby had been picketing or demonstrating outside the hospital wearing her body sign before she entered the lobby to leaflet. Her leafleting in the lobby was functionally and geographically distinct. And it is not significant, as Respondent seems to contend, that Union Representative Frieman was seemingly patrolling up and down the lobby wearing a body sign at the same time McNasby was leafletting. Whatever Frieman, a nonemployee, was doing in the lobby did not taint what McNasby was doing. The complaint alleges neither that Frieman was engaged in protected activity nor that Respondent acted unlawfully toward her. It is Respondent's actions vis-à-vis McNasby, an off-duty employee engaged in protected activity in the lobby, that is the subject of the complaint allegation. See *Providence Hospital,* 285 NLRB 320, 322-323 (1987) (handbilling was functionally and geographically distinct from picketing elsewhere); and *Southwest Regional Council of Carpenters*, cited above, 356 NLRB at slip op. 1, fn. 3, citing *Service Employees Local 525 (General Maintenance Service Co.)*, 329 NLRB 638, 681 (1999), enfd. 52 Fed. Appx. 357 (9th Cir. 2002) (handbilling is not coercive simply because picketing either precedes or follows it even where no hiatus occurs between the two).

Nor is McNasby's conduct rendered unprotected because, as Respondent also contends (Br. 52-55), other demonstrators had leafleted earlier in the day in other parts of the interior of the hospital, arguably interfering with patient care. That alleged unprotected activity was attenuated from what McNasby was doing in the lobby, clearly a nonpatient area. It is also clear that the sins of employees who engage in misconduct during protected activity are not visited on others who engage in protected activity free from misconduct. See *NLRB v. Burnup & Sims, Inc*., 379 U.S. 21, 23 (1964). See also *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000), enfd. 297 F.3d 468 (6th Cir. 2002) (broad rule covering protected conduct unlawful despite its lawful coverage of unprotected conduct).

Accordingly, I find that Respondent violated Section 8(a)(1) of the Act when it banned McNasby from leafleting in the hospital lobby unless she removed her body sign. I also find that Respondent similarly violated Section 8(a)(1) when Human Resources Representative Riley told McNasby she would get "in trouble" if she "stood" where she was handing out leaflets. His statement, which did not even mention the body sign, was an implicit threat of reprisal for engaging in protected union activity. See *St. Mary Medical Center*, 339 NLRB 381, 384 (2003).

The 8(a)(1) Violations Dealing with Employee Solicitation and Support for Striking Employees

The complaint alleges three separate violations dealing with written documents interfering with the protected rights of employees. Paragraph 11 of the complaint alleges that, during relevant times, Respondent maintained the following unlawfully broad rule: "Solicitation of patients and visitors by anyone for any purpose on [Respondent's] property is strictly prohibited." Paragraph 10 of the complaint alleges that, on September 21, 2014, Respondent sent its paramedics an email stating that they could not show support for striking nurses employed by Respondent in a different unit by "blowing of the EMS vehicles horns . . . waving/clapping or cheering as you pass by

the picket line." It also alleges that the email created the impression that Respondent would be monitoring the protected activity of the strikers and their supporters, thus further violating the Act.

The no-solicitation rule maintained by Respondent from April through December of 2014 was unlawfully broad. As mentioned above, the Supreme Court has endorsed the Board's view that a hospital employer may not ban employee solicitation or distribution of literature during nonworking time in nonworking areas, where the employer has not justified the prohibitions as necessary to avoid disruption of health care services or disturbance of patients. *Beth Israel Hospital*, supra, 437 U.S. at 507 and *Baptist Hospital,* supra, 442 U.S. at 779-791. Applying these principles, I find that the no-solicitation rule in this case, which was in effect at all relevant times in 2014, until its rescission in January of 2015, is unlawfully broad because it was not appropriately limited in time or location. Moreover, employees are entitled to solicit aid from patients or visitors so long as it is done on nonwork time and in nonwork areas. See *UCSF Stanford Health Care*, 335 NLRB 488, 527-528 (2001), enfd. in relevant part, 325 F.3d 334 (D.C. Cir. 2003). Thus, the rule is presumptively unlawful. Nor is there any evidence of appropriate justification for such a broad rule. The rule does not, for example, even mention patient care or health care operations. And no evidence was submitted to show it was required in order to protect patient care or health care operations. In these circumstances, it is clear that the rule infringes on the protected rights of employees and is thus violative of Section 8(a)(1) of the Act. See *Carney Hospital,* 350 NLRB 627, 643-644 (2007); and *Doctor's Hospital of Staten Island*, 325 NLRB 730, 735 (1998).

In an email to the paramedics on the first day of the nurses' strike, Respondent prohibited them from engaging in activity in support of the nurses, specifically mentioning cheering, waving, blowing horns or other indicia of support as they drove past picketing nurses. Uncontradicted testimony establishes that Respondent had never before prohibited signs of support for activity other than union activity. Tr. 192-203. Employees, of course, have the protected right to support fellow employees in their protected activity, including support for their strike. Such acts of sympathy have been recognized from the early days of the Act, notably in a famous quote from Judge Learned Hand in *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.,* 130 F.2d 503, 505-506 (2nd Cir. 1942) (employees making common cause with fellow employees are engaged in protected activity, even though "the immediate quarrel does not concern them" because the solidarity thus established assures them, if their "turn ever comes," of the support of those "whom they are all then helping."). Thus, prohibiting the paramedics from acts of support for the strikers interfered with their own protected activity and violated Section 8(a)(1).[15]

[15] Respondent's contention (Br. 61-62) that the email did not actually coerce employees is without merit. The test for a violation of Section 8(a)(1) does not turn on whether any employees were actually coerced, but whether the conduct had the reasonable tendency to interfere with the exercise of Section 7 rights. See *NLRB v. Illinois Tool Works*, 153 F.2d 811, 816 (7th Cir. 1946).

Also violative of Section 8(a)(1) was the email suggestion that security personnel would monitor such activities, thus creating the impression that their protected activity was or would be under surveillance. See *Sam's Club,* 342 NLRB 620, 620-621 (2004); and *Caterpillar Logistics, Inc.*, 362 NLRB No. 49, slip op. 2 (2015).[16]

Respondent asserts (Br. 63-64, 67) that it effectively repudiated the unlawful rule and the unlawful email. Thus, it allegedly repudiated the old no-solicitation rule by virtue of its issuance a new rule in January of 2015, which, it asserts, is valid. And it apologized for the offensive email in a subsequent one in which it stated that it "disavow[ed] and repudiate[d]" the earlier email. The second email was sent almost 7 weeks after the offending one, well after the strike that spawned the offending email.

In order for a repudiation to serve as a defense to an unfair labor practice finding, it must be timely, unambiguous, specific in nature to the coercive conduct, and untainted by other unlawful conduct. *Passavant Memorial Hospital*, 237 NLRB 138 (1978); and *Fresh & Easy Neighborhood Market*, 356 NLRB No. 85, slip op. at 9-10 (2011), enfd. 468 Fed. Appx. 1 (D.C. Cir. 2012). In addition, the repudiation or disavowal must be adequately disseminated to employees and must contain assurances that, going forward, the employer will not interfere with the exercise of Section 7 rights. *New Passages Behavioral Health & Rehab*, 362 NLRB No. 55, slip op. 1-2 (2015) and cases there cited.

Respondent's disavowals did not meet the standards set forth above. The new no-solicitation rule was unaccompanied by any admission that the old one was unlawful. And the disavowal of the email to the paramedics was untimely with no assurance that the Respondent would not engage in other unfair labor practices in the future. Accordingly, I find that none of the unfair labor practices were repudiated sufficiently to require dismissal of the complaint allegations dealing with the no-solicitation rule and the email to the paramedics.

The Alleged Section 8(a)(5) and (1) Violations Involving Information Requests

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide information requested by the Union in April and May of 2014. Paragraph 12(a) and (b) of the complaint identifies this information as copies of the

[16] Respondent asserts (Br. 62) that there can be no unlawful impression of surveillance because the suggestion that security personnel were watching for protected activity was simply a suggestion of open observation. But open observation is itself unlawful if it gives the impression that the employer is doing something out of the ordinary to observe protected activity. See *Loudon Steel, Inc*., 340 NLRB 307, 313 (2003). Here, the Respondent sent an email to the paramedics raising the prospect that security personnel would be watching them as they engaged in protected activity. The email itself, which specifically referred to protected activity, amounted to something more than the ordinary passive observation of public open conduct. Moreover, the suggestion about surveillance was intertwined with an order to avoid protected activity that, to the recipient, would not be wise to disregard.

Joint Commission's surveys for the past 3 years and the "actual survey results delivered to" Respondent by the Joint Commission, including "any non-public documents and correspondence from the Joint Commission and any recommendations or deficiencies identified from the unannounced surveys." The complaint also alleges a violation of Section 8(a)(5) and (1) by the Respondent's failure to provide information requested by the Union on September 12, 2014. Paragraph 12(c) identifies this information as copies of its staffing agreement with respect to strike replacements, including all underlying correspondence, notes and other writings with respect to the negotiations of that agreement. It also identifies as requested information copies of other staffing agreements relating to temporary employment entered into within the last 3 years.

An employer has the statutory obligation under Section 8(a)(5) of the Act to provide, on request, potentially relevant information that a union needs for the performance of its duties as collective bargaining representative. Where that request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and it must be provided. In such circumstances, the employer has the burden of rebutting the presumption and establishing lack of relevance. The standard for relevance is a "liberal discovery type standard." Where the requested information pertains to employees or matters outside the bargaining unit, the union has the burden of proving relevance. However, that burden is the same: a "liberal discovery type standard." *Lennox Hill Hospital*, 362 NLRB No. 16, slip op. at 7 (2015). Accord: *United Parcel Service of America,* 362 NLRB No. 22, slip op. 2-3 (2015). See also *McKenzie-Williamette Regional Medical Center Associates*, 362 NLRB No. 20, slip op. 2, quoting *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 437 (1967) for the notion that the discovery type standard in these cases requires only "the probability that the desired information was relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities."

In addition, it is for the union, not the employer, to decide what information can be of use to it. See *FirstEnergy Generation, LLC*, 362 NLRB No. 73, slip op. 7 (2015). And a union need not accept an employer's representations in bargaining. It is entitled to verify an employer's assertions. *Finch, Pruyer & Co.*, 349 NLRB 270, 275-277 (2007), enfd. 296 Fed. Appx. 83 (D.C. Cir. 2008).

Where, as here, an employer raises confidentiality concerns, the employer has the burden of establishing a legitimate claim of confidentiality that would justify refusal to provide the requested information. *Medstar Washington Hospital Center*, 360 NLRB No. 103, slip op. 1, fn. 1 and 4 (2014). See also *NLRB v. Detroit Edison*, 440 U.S. 301 (1979). The Board has recognized that, in assessing whether an employer has asserted a legitimate confidentiality interest, it may consider state law on the matter. *Borgess Medical Center,* 342 NLRB 1105 (2004).

Even if a confidentiality concern is established, however, the employer must offer to accommodate both its concern and its bargaining obligation, "as is often done by making an offer to release the information conditionally or by placing restrictions on [its] use . . . . [T]he onus is on the employer because it is in the better position to propose how best it can respond to a union request for information. The union need not propose

the precise alternative to providing the information unedited." *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 21 (D.C. Cir. 1998). Nor do offers of summaries or alternative documents reflect the type of accommodation required. Id. at 22. Failure to bargain in good faith about such accommodation amounts to a violation of Section 8(a)(5). Ibid. See also *Borgess Medical Center*, cited above, 342 NLRB at 1106, citing authorities.

The Joint Commission Information

Although there is no doubt that staffing was an issue in the parties' negotiations, Respondent contends (Br. 78-81) that the Union's request for the Joint Commission information did not meet the liberal standard of relevance applicable in information cases. I disagree. As Union Representative Gaffney credibly testified, the Union wanted more staffing and Respondent wanted less staffing. One of the signs used in the June picketing specifically mentioned staffing issues as one of the Union's concerns. The deficiencies mentioned in the public documents included infection control and surgical services. Both implicated the "probability" that the non-public documents would impact staffing issues. As Gaffney also testified, those deficiencies arguably supported a view that more nurses were necessary to ameliorate the deficiencies and thus supported the Union's need for the information in bargaining. This is sufficient, under applicable case law, to establish an inference of relevance.[17]

I find, however, that the Respondent has established that the Joint Commission information requested by the Union qualified as confidential under the Board's decision in *Borgess Medical Center*. The Pennsylvania statute dealing with peer review confidential information covers the Joint Commission report and its deliberations. This is reflected in *O'Neil v. McKeesport Hospital*, 48 Pa. D. & C.3d 115 (1987); and *Young v. Western Pennsylvania Hosp.,* 722 A.2d 153, 156 (1998). Therefore, I find that Respondent did not violate the Act when it initially refused to turn over the non-public parts of the Joint Commission report and the underlying documents that were connected to the report.[18]

[17] Nor has Respondent rebutted the inference of relevance, as it easily could have by providing a redacted copy of the Joint Commission documents or otherwise demonstrating that the deficiencies had nothing to do with staffing issues. Indeed, the Respondent's chief negotiator never even viewed the non-public documents that Respondent claimed were not relevant to the staffing issues raised by the Union.

[18] The General Counsel and the Charging Party seek to distinguish *Borgess Medical Center* on the ground that the Michigan statute involved in that case established a broader confidentiality bar than the Pennsylvania statute involved here. G.C. Br. at 11-12; C.P. Br. at 14. Comparing the statute in this case (footnote 7 above) with the Michigan statute set forth at footnote 4 of *Borgess,* 342 NLRB at 1105, I am unable to make that distinction. The thrust of both statutes is the same; indeed, if anything, it seems to me that the Pennsylvania statute is broader. Nor do I accept the contention made in both briefs that Respondent's claim of confidentiality was too vague. It was based on the applicable statute, which, in my view, adequately supports the claim.

However, I also find, as did the Board in *Borgess Medical Center*, that Respondent failed to meet its burden of showing that it offered to bargain about accommodations that would meet both its bargaining obligation and legitimate confidentiality concerns. Gilson's testimony not only shows that Respondent made no such offer, but also that Respondent took an adamant and unyielding position on the matter. Gilson took an all or nothing position against revealing any of the information. Indeed, he admitted he did not even see the Joint Commission report so he had no idea how the report or its underlying documents could be redacted or edited to accommodate both whatever confidentiality interests were involved and Respondent's bargaining obligation. Nor was any consideration given to other alternatives, such as, for example, seeking the Union's agreement to preserve confidentiality concerns or turning the documents over to a mediator or another neutral to make whatever redactions that would preserve confidentiality interests. See the above discussion of the Circuit Court opinion in *U.S. Testing*. In these circumstances, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith about accommodations to any confidentiality interests regarding the Joint Commission report and information.[19]

The Strike Replacement Information

As shown in the factual statement, the Union notified Respondent on September 8 that it would be engaging in a 2-day strike beginning on September 21. Four days later, Respondent notified its employees that it had concluded an agreement with a staffing company to provide replacements for the striking nurses and the staffing company required a 5-day guarantee for the replacements. That same day, the Union requested a copy of the agreement, along with underlying documents related to the negotiations for that agreement, as well as copies of other agreements Respondent had reached with providers of temporary nurses in the last 3 years.

No information was provided until about 3 weeks later, after the conclusion of the strike, and, even then, Respondent provided only a redacted copy of the agreement. The copy provided to the Union included the name of the staffing company, U.S. Nursing, the confidentiality clause, which had assertedly prevented the Respondent from providing the agreement to the Union, and a clause setting forth the 5-day guarantee. None of the other information requested by the Union was ever provided, although Respondent later asserted that it tried unsuccessfully to obtain contracts from

[19] Respondent claims (Br. 87-91) that Pennsylvania's peer review statute not only establishes its confidentiality defense, but also creates a "privilege" that is waived in toto, if waived in part, thus precluding any accommodation in this case. But confidentiality under Board law does not mean that a legal privilege recognizable under federal law has been established. Its citation of *BP Exploration*, 337 NLRB 887 (2002) is inapposite. That case involved the well recognized attorney-client privilege. Id. at 889. No such privilege is involved here. In any event, there would be no waiver even under Respondent's theory if, in seeking an accommodation, Respondent obtained the agreement of the Union to provide some but not all of the information. But Respondent did not seek such an agreement here.

other suppliers of temporary nurses, as requested by the Union, but was rebuffed by the other parties to the contracts because of confidentiality clauses similar to the one in the U.S. Nursing agreement.

There is no serious contention that the Union's request for information about the 5-day guarantee was not relevant.[20] The Union wanted assurances that the 5-day guarantee was not a subterfuge to retaliate against striking nurses by denying them 3 days pay after the announced conclusion of their strike. Thus, information about the 5-day guarantee directly affected the terms and conditions of employment of the staff nurses represented by the Union. As the Union stated in one of its information requests, it needed the information in order to properly enforce the anti-discrimination provisions in the collective bargaining agreement either through grievances or in bargaining. Indeed, the parties actually discussed the 5-day guarantee issue in negotiations. Nor was the Union required to accept Respondent's representations about the 5-day guarantee and who proposed it. See *Finch, Pruyn & Co.,* cited above, 349 NLRB at 275-277 (2007).

Time was of the essence here because of the short time period between the Section 8(g) strike notice and the strike itself. To be useful in this case, the information would have had to be provided before the strike ended. And here it was not. The evidence shows that the parties met once before the strike on the issue of the replacements. Gilson notified the Union of the 5-day guarantee, but did not provide the agreement that contained the 5-day guarantee or any other information that would have met the Union's concerns. In these circumstances, the delay in providing relevant information could have been prejudicial to the Union. It is settled law that an unreasonable delay in providing relevant information is as much a violation as failing to provide it at all. See *Lennox Hill Hospital,* cited above, 362 NLRB No. 16, at slip op. 7.[21]

Respondent's production of the redacted copy of the U.S. Nursing agreement was not only untimely and unreasonably delayed, but it did not meet the Union's need for the entire agreement. The redacted copy does not even contain the date of the agreement or the definition of a "Workweek." Most of the agreement appears to have been withheld. That part certainly had the potential to shed light on the 5-day guarantee and its context. It is thus relevant information under well-settled Board law.

Respondent asserts that it was, and is, unable to provide the complete unredacted U.S. Nursing agreement or the other contracts for temporary nurses

[20] Respondent concedes that the U.S. Nursing agreement was relevant to the Union's bargaining needs, but disputes that the underlying documents leading to that agreement and copies of other temporary staffing agreements are relevant. See Br. 95-97. As shown below, I disagree with Respondent as to the relevance of the underlying documents leading to the U.S. Nursing agreement. I do, however, agree with Respondent that the other temporary staffing agreements are not relevant.

[21] I do not make such a finding here, in view of my broader finding, set forth below, that Respondent violated the Act by failing to provide a full and complete copy of the agreement.

because of confidentiality clauses in those agreements. Respondent thus raises a confidentiality defense to the allegations it failed to provide information about the 5-day guarantee. First of all, the contractual confidentiality clause in the U.S. Nursing agreement does not cover the underlying information requested by the Union concerning the negotiations of the agreement. It refers only to the contract itself. Such underlying information, which the Respondent never provided, is likely to shed light on the origin and necessity of the 5-day guarantee and is thus relevant to the Union's position on whether the strikers could return to work at the end of the 2-day strike. In these circumstances, the Respondent's failure to provide this relevant underlying information cannot be excused by confidentiality concerns.

Moreover, it is not clear to me that the confidentiality clause in the U.S. Staffing agreement or in other staffing agreements provides a recognizable confidentiality interest to defeat an otherwise legitimate information request. These are confidentiality clauses between private contracting parties; there is no recognizable public interest that is apparent in the context of those agreements that would prevent their disclosure to the bargaining representative of the employees of one of the contracting parties. There is, for example, no state statute that governs the information such as was present in the peer review information discussed above with respect to the Joint Commission request. Nor can I see any reason why the desire of private parties to keep their contracts confidential, without more, should trump a Union's need for relevant information. Moreover, the confidentiality clause in the U.S. Nursing agreement specifically excludes from its coverage information "required by law." In my view, this exclusion covers information required by rulings of administrative agencies, such as the Board, whose orders are enforceable in U.S. Courts of Appeals. Finally, as I have indicated, the confidentiality clause in the U.S. Nursing agreement does not cover the underlying documents that led to the agreement and that the Union requested and the Respondent never provided. But, even if it did, since the confidentiality clause does not insulate the contract itself from being provided to the Union, it would likewise not insulate the underlying information from being provided. In sum, I reject Respondent's attempt to show that confidentiality interests override its bargaining obligation to provide relevant information with respect to the 5-day guarantee for strike replacements.

Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the underlying documents leading to the U.S. Nursing agreement to provide strike replacements and by failing to provide a copy of the full and complete U.S. Nursing agreement. I therefore sustain those parts of paragraph 12(c) of the complaint.

In view of my findings above, I do not believe that the other agreements dealing with temporary employees that the Union requested are relevant to the 5-day guarantee, which was the Union's main concern. The Union was free to make the contention in bargaining that Respondent could have used another temporary service that perhaps would not have required a 5-day guarantee. But I cannot see how having copies of such agreements would be of any particular help to the Union in making this contention. Nor is there any suggestion that these agreements dealt with strike replacements or that the companies involved were capable or in the business of

providing strike replacements. I will therefore dismiss the remainder of paragraph 12(c) of the complaint.

Conclusions of Law

1. By banning off-duty employees from picketing, leafleting and demonstrating in the exterior areas of its property; by banning and an off-duty duty employee from leafleting in the first floor lobby of its hospital and threatening that employee if she did; by maintaining a broad no-solicitation rule; and by prohibiting employees from supporting their striking fellow employees and by creating in those employees an impression that their union support would be under surveillance, the Respondent has violated Section 8(a)(1) of the Act.

2. By failing to bargain in good faith with the Union over accommodations between confidentiality concerns in documents related to the Joint Commission (JCAHO) reports requested by the Union and the Union's need for such information, Respondent has violated Section 8(a)(5) and (1) of the Act.

3. By failing to provide the Union with documents leading to the negotiations of the staffing agreement between Respondent and U.S. Nursing to provide replacements during the Union's September 2014 strike against Respondent, and by failing to provide the Union with a full and complete copy of the agreement, the Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The above violations are unfair labor practices within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist from such conduct and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law, and on the entire record here, I issue the following recommended[22]

ORDER

The Respondent, Crozer Chester Medical Center, Upland, Pennsylvania, its officers, agents, successors and assigns, shall

[22] If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

1. Cease and desist from

(a) Banning off-duty employees from picketing, leafleting and demonstrating in the exterior areas of its property; banning off-duty employees from leafleting in the first floor lobby of its hospital unless they removed body signs supporting their union and threatening them with retaliation if they did; maintaining a broad no-solicitation rule that interferes with protected activity; and prohibiting employees from supporting their striking fellow employees and creating an impression that their union support would be under surveillance.

(b) Failing to bargain in good faith with the Union over accommodations between confidentiality concerns in documents related to the Joint Commission (JCAHO) reports requested by the Union and the Union's need for such information.

(c) Failing to provide the Union with documents leading to the negotiations of the staffing agreement between Respondent and U.S. Nursing to provide replacements during the Union's September 2014 strike against Respondent, and failing to provide the Union with a full and complete copy of the agreement.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Bargain in good faith with the Union over accommodations between confidentiality concerns in documents related to the Joint Commission reports requested by the Union and the Union's need for such information.

(b) Provide the Union with information requested by it in connection with negotiations between Respondent and U.S. Staffing regarding the five-day guarantee for strike replacements in September 2014, and provide the Union with a full and complete copy of the agreement.

(c) Within 14 days after service by the Region, post, at its facility in Upland, Pennsylvania, copies of the attached notice marked "Appendix." [23] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by

[23] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and all former employees employed by the Respondent at any time since June 6, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

It is further ORDERED that the complaint is dismissed insofar as it alleges violations not specifically found.

Dated, Washington, D.C. May 13, 2015

_____
Robert A. Giannasi
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT ban off-duty employees from picketing, leafleting or demonstrating in the exterior areas of our property; **WE WILL NOT** ban off-duty employees from leafleting in the first floor lobby of our hospital unless they remove body signs supporting their union or threaten them with retaliation if they do; **WE WILL NOT** maintain a broad no-solicitation rule that interferes with protected activity, and **WE HAVE** rescinded that rule; and **WE WILL NOT** prohibit employees from supporting their striking fellow employees and create an impression that their union support is under surveillance.

WE WILL NOT fail to bargain with the Union in good faith over accommodations between confidentiality concerns in documents relating to the Joint Commission (JCAHO) reports requested by the Union and the Union's need for such information.

WE WILL NOT fail to provide to the Union documents leading to the negotiations of the staffing agreement between us and U.S. Nursing to provide replacements during the Union's September 2014 strike; and WE WILL NOT fail to provide the Union will a full and complete copy of the agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain in good faith with the Union over accommodation between confidentiality concerns in documents related to the Joint Commission reports requested by the Union and the Union's need for such information

WE WILL provide information requested by the Union in connection with negotiations between us and U.S. Nursing regarding strike replacements in September 2014;and WE WILL provide the Union with a full and complete copy of the agreement.

CROZER CHESTER MEDICAL CENTER

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404

(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-130177 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.